

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

SDMS Document



102133

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IN THE MATTER OF :
THE CORTESE LANDFILL SITE :
 :
Town of Tusten, : ADMINISTRATIVE ORDER
 : ON CONSENT
Respondent. :
 : Index Number
Proceeding Under Section 106(a) : II-CERCLA-94-0209
of the Comprehensive Environmental :
Response, Compensation, and Liability :
Act, as amended, 42 U.S.C. § 9606(a). :
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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Town of Tusten, a municipal corporation of the State of New York (hereinafter referred to as "Respondent"). This Order provides for the performance of a removal action by Respondent and the reimbursement of response costs incurred by the United States in connection with the Cortese Landfill site (hereinafter, the "Site"), which is located in the Town of Tusten, Sullivan County, New York. This Order requires Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare, or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

2. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further redelegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C.

3. EPA has notified the New York State Department of Environmental Conservation ("NYSDEC") of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondent's performance of the requirements of this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest

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the basis or validity of this Order or its terms in any action to enforce its provisions, and Respondent further agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order.

II. PARTIES BOUND

5. This Order applies to and is binding upon Respondent and Respondent's successors and assigns. Respondent agrees to the extent applicable to instruct its officers, directors, employees and agents involved in the performance of the Work required by this Order to cooperate in carrying out Respondent's obligations under this Order. Respondent agrees that its officers, directors, employees, and agents involved in the performance of the Work required by this Order shall take all necessary steps to accomplish the performance of said Work in accordance with this Order. The individuals who have signed this Order on behalf of Respondent certify that they are authorized to bind Respondent to this Order.

6. At least thirty (30) days prior to the conveyance by Respondent of any interest in real property at the Site, Respondent shall give written notice (a) to the transferee that the property is subject to this Order and (b) to EPA and the State that it is proposing to convey the property, including the name and address of the transferee. Respondent agrees to require that its successors comply with the immediately proceeding sentence and Section VI.F. of this Order (Access to Property and Information).

7. Respondent shall ensure that its contractor(s), subcontractor(s), and representatives receive a copy of and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order, in an attachment to this Order, or in documents incorporated by reference into this Order, the following definitions shall apply:

a. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

b. "day" means a calendar day unless otherwise expressly stated. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day.

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c. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

d. "hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

e. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, published at 55 Fed. Reg. 8666 (1990), and codified at 40 C.F.R. Part 300, including any amendments thereto.

f. "NYSDEC" means the New York State Department of Environmental Conservation.

g. "Party" or "Parties" means the United States Environmental Protection Agency and/or Respondent.

h. "Respondent" means the Town of Tusten, a municipal corporation of the State of New York.

i. "Site" means the Cortese Landfill Site located in the Village of Narrowsburg, Town of Tusten, Sullivan County, New York.

j. "State" means the State of New York.

k. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.

l. "Work" means all work and other activities required by and pursuant to this Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. The Site is included on the National Priorities List ("NPL") of known or threatened releases of hazardous substances. The NPL, codified at 40 CFR Part 300, Appendix B, has been promulgated pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B).

10. Between 1970 and 1981, John Cortese operated a landfill on a 5.25 acre parcel of land in the Village of Narrowsburg, Town of Tusten, New York (hereinafter the "Landfill"). The area of the Landfill consists of a southerly portion of approximately 3.75 acres which was, at all times during operation of the Landfill,

and is owned by John Cortese. The Landfill also includes a northerly portion of approximately 1.25 acres which in April of 1973 was purchased by the Town of Tusten from John Cortese. The sale of the northerly portion included a lease agreement in which John Cortese was permitted to continue disposal operations for a period of one year on the Town of Tusten's parcel.

11. The Landfill which slopes gently to the south-southwest is bounded by the Town of Tusten's municipal waste water treatment plant to the Northwest, to the Southwest by a railroad embankment, and to the East by a 350 foot escarpment. The Delaware River is located approximately 400 feet southwest of the Landfill.

12. The Site is characterized by contaminated groundwater, contaminated surface water, and contaminated soil. The Site includes the Landfill and any areas affected by the contamination emanating therefrom.

13. During the period of its operation, the Landfill received approximately 3,000 cubic yards of municipal waste per year from the Town of Tusten and neighboring towns. In addition, EPA has information which indicates that between June and October of 1973, at which time the Town of Tusten was the owner-lessor and John Cortese was the lessee of the northerly portion of the Landfill, industrial wastes, including solvents, paint thinners, paint sludge, starches and waste oil were disposed of at the Site. Said disposal of industrial wastes included the placement of drums and/or the contents thereof which contained hazardous substances into unlined trenches. Although the exact number of drums disposed of is unknown, it is estimated that 3,000 to 5,000 of such drums may have been disposed of at the Site. Drums and/or their contents were disposed of in unlined trenches on both the southerly and northerly portions of the Landfill.

14. SCA Services, Inc. ("SCA"), as successor-in-interest to Gaess Environmental Services, transported the above-referenced drums to the Site.

15. EPA has information indicating that Consolidated Edison, in addition to the drummed wastes transported to the Site by SCA, arranged for the disposal at the Site of drummed waste oils which it generated.

16. Subsequent to the filing of a suit in Federal District Court, New York State Department of Environmental Conservation ("NYSDEC") and SCA entered into a stipulation and order (the "Stipulation and Order") in 1985 to conduct a remedial investigation at the Site. SCA performed activities pursuant to the Stipulation and Order and submitted to NYSDEC a Phase I report in July of 1987 and a Phase II report in August of 1988. The investigations performed by SCA pursuant to the Stipulation

and Order revealed contamination of the following media: (a) groundwater underlying the Site, including contamination by benzene, toluene, xylenes, tetrachloroethylene, chlorobenzene, ethylbenzene, naphthalene, 1,1-dichloroethane, vinyl chloride, 1,2,4-trichlorobenzene, arsenic, and barium; (b) soil at the Site, including contamination by toluene, and nickel; (c) surface water at the Site, including contamination by toluene, 1,1-dichloroethane, 1,2-trans-dichloroethylene, trichloroethylene, and xylenes.

17. Data derived from both phases of the remedial investigation indicates that compounds have entered the groundwater system, and that the groundwater is discharging into the Delaware River. The section of the river affected is a recreational area classified as a "Wild and Scenic River" pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. § 1271.

18. In April of 1990, NYSDEC formally transferred the lead enforcement role to the EPA.

19. In September of 1990, EPA issued an Administrative Order on Consent, Index Number II CERCLA-00217, to SCA for the performance of additional investigative activities which were determined to be necessary to complete the remedial investigation and feasibility study at the Site, including the assessment of potential effects on the Delaware River embayment waters.

20. Exposure through the potential exposure pathways of direct contact, ingestion, or inhalation to many of the substances referred to in paragraph 16, above, may cause a variety of adverse effects to exposed population groups.

21. Respondent, a municipal corporation, is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent is also the "owner" of a portion of the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

22. The Landfill constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), as does the Site as a whole.

23. Contaminants found at the Site as described in paragraph 16 are hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. There have been and continue to be releases and/or threats of releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances from the Site.

25. The conditions described above constitute an actual or threatened "release" of a hazardous substance from the Site, as defined by Sections 101 (22) of CERCLA, 42 U.S.C. § 9601(22).

26. The conditions present at the Facility constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the NCP. These factors include the following:

- a. potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. actual or potential contamination of drinking water supplies or sensitive ecosystems, and
- c. high levels of hazardous substance or pollutants or contaminants in soils at or near the surface which may migrate.

27. Respondent has been given an opportunity to discuss with EPA the basis for issuance of this Consent Order and its terms. The actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

V. DETERMINATION

28. Based upon the Findings of Fact and Conclusions of Law set forth above, and the administrative record supporting this removal action, EPA has determined that the actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VI. ORDER

29. It is hereby ordered and agreed that Respondent shall undertake a response action at the Site in accordance with the requirements specified below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

A. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

30. Respondent shall perform the removal action required by this Order. Respondent may retain a contractor to perform the removal action. Respondent shall notify EPA of the name and qualifications of any selected contractor(s) or subcontractor(s) proposed to be retained to perform any portion of the removal action under

this Order at least ten (10) days prior to commencement of such removal activities.

31. EPA retains the right to disapprove of any, or all, of the contractor(s) and/or subcontractor(s) proposed by Respondent. If EPA disapproves of a proposed contractor to conduct a portion of the removal action or if Respondent seeks to change the designated contractor, Respondent shall propose an alternate contractor, including providing its qualifications, within fourteen (14) days of notification by EPA of its disapproval or Respondent's notification of intention to change the designated contractor.

32. Respondent shall provide a copy of this Order to each contractor and subcontractor retained to perform the work required by this Order. Respondent shall include in all contracts or subcontracts entered into for work required under this Order provisions stating that such contractor(s) or subcontractor(s), including its agents and employees, shall perform activities required by such contracts in compliance with this Order and all applicable laws and regulations. Respondent shall be responsible for ensuring that its contractor(s) and subcontractor(s) perform the work contemplated herein in accordance with this Order.

33. All activities required of Respondent under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all work conducted pursuant to this Order shall be performed in accordance with professional standards.

34. Within three (3) days after the effective date of this Order, Respondent shall propose a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by this Order. Respondent shall submit the proposed designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present at the Site or readily available during the performance of work at the Site. EPA retains the right to disapprove of any proposed Project Coordinator. If EPA disapproves of a proposed Project Coordinator, Respondent shall propose a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within three (3) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

35. EPA has designated Louis DiGuardia of EPA, Region II, Emergency and Remedial Response Division as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions

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required by this Order to the OSC. EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change its designated OSC or Project Coordinator. Respondent shall notify EPA five (5) days before such a change is made. The initial notification may be orally transmitted, but such notification shall be promptly followed by a written notice.

B. Work To Be Performed

36. Respondent shall perform the following removal activities:

a. excavate and dispose of all material associated with the two (2) septage lagoons to a depth of eight feet or to a cleanup level of 95% of the maximum detected contaminant concentration as determined by the samples obtained during the Remedial Investigation, whichever is attained first. The materials to be excavated include septic sludge and material mixed with the septic sludge, as well as soils contaminated by releases of hazardous substances from the septic sludge at the Site. The lagoons will be backfilled after excavation, with the uppermost portion filled with relatively impermeable material;

b. construction of a drainage swale along the eastern edge of the Site;

c. describe measures to protect the health and welfare of surrounding residents, including the notification of the neighboring property owners of the intended and scheduled removal activities, and

d. provide site security, as necessary.

Site Operations Plan

37. Within ninety (90) days after the effective date of this Order, Respondent shall submit to EPA for review and approval a draft Site Operations Plan for performing the removal action set forth above. The draft Site Operations Plan shall provide a description of, and an expeditious schedule for, the response activities required by this Order. The draft Site Operations Plan shall include the following:

a. Site Work Plan, and

b. Health and Safety Plan.

38. The Site Work Plan shall:

a. identify any locations and operational procedures for the removal of the sludge, sludge-related material, and contaminated soil from the septage lagoons;

b. identify any procedures for disposal or treatment of the sludge, sludge-related material, and contaminated soil;

c. identify arrangements for transportation and disposal of all these materials. All waste disposal conducted by Respondent pursuant to this Order shall comply with all requirements of CERCLA, including but not limited to Section 121(d)(3), 42 U.S.C. § 9621(d)(3), the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6991, the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601-2625, and all the regulations promulgated pursuant thereto, and all other applicable federal and state laws and regulations;

d. identify arrangements with the publicly owned treatment facility for discharge of any surface water, if necessary;

e. delineate sampling methods to confirm that contamination is removed to appropriate levels;

f. identify methods to be employed in construction of the drainage swale, including the engineering design, construction, operation, and maintenance specifications for this removal activity (as required);

g. identify procedures for bulking, stabilization and/or solidification of sludge, sludge-related material, and contaminated soil from the septage lagoons; and the steps to determine if bulking and solidification is necessary;

h. identify plans for temporary storage of waste as it is staged and prepared for treatment and/or disposal, including:

- i. measures to prevent the exposure of the waste to the elements and nearby population;
- ii. construction of a containment system to prevent spillage, runoff, and run-on (i.e., dike, berm);
- iii. measures to prevent the accumulation of liquids from rainfall during pre- and post-removal operations; and
- iv. engineering measures to monitor and assure that the emission of hazardous vapors/particulates during operations does not exceed levels set forth in the Health and Safety Plan.

i. set forth a detailed schedule for the performance of the tasks set forth, above, in subparagraphs a-h.

39. The draft Health and Safety Plan ("HSP") shall satisfy the requirements of 29 CFR Part 1910.120, Hazardous Waste

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Operations Standards, and EPA's "Standard Operating Safety Guides" (OSWER, 1988), and specify measures to be undertaken to protect the health and safety of the general public in the vicinity of the Site. More specifically, the HSP shall describe measures to eliminate potential exposure during work at the Site. This plan shall include the following:

- a. a plan for providing for health and welfare during on-site activities, and
- b. a plan to prevent the release of any hazardous substances, pollutants or contaminants at or from the Site during the course of the Work to be performed pursuant to this Order.

40. Upon approval of the Site Work Plan and HSP, Respondent shall implement the Site Work Plan as approved in writing by EPA in accordance with the EPA approved schedule therein. Once approved, or approved with modifications, the Site Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order.

41. If performance of any subsequent phase of the Work mandated by this Order requires alteration of any plan, Respondent shall submit to EPA for review and approval proposed amendments to that plan.

42. The Site Work Plan shall include response measures to be taken in the event that additional releases or threatened releases occur at the Site, during the implementation of the Site Operations Plan, including releases to air, soil, ground or surface water.

43. EPA may approve, disapprove, require revisions to, or modify the draft Site Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Site Operations Plan within fourteen (14) days of receipt of EPA's notifications of the required revisions. Respondent shall implement the Site Operations Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Site Operations Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least forty-eight (48) hours prior to performing any work at the Site pursuant to the EPA-approved Site Operations Plan.

44. When sampling, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing Work under this Order. EPA and NYSDEC shall have the right to take any additional samples that it deems necessary. Upon request by EPA, Respondent shall have a certified laboratory analyze samples

submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

45. Respondent shall commence implementation of the EPA-approved Site Work Plan after its approval by EPA and in accordance with the schedule set forth therein. Respondent shall not commence or undertake any removal action at the Site without prior EPA approval.

C. Reporting

46. All reports and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Order shall be signed by a responsible official of Respondent. For purposes of this Order, a responsible official is an official who is in charge of a principal administrative function.

47. All work plans, reports, notices, and other documents required to be submitted to EPA under this Order shall be sent to the following addressees:

1 copies to:

Louis DiGuardia
Emergency & Remedial Response Division
Response and Prevention Branch
United States Environmental Protection Agency
2890 Woodbridge Avenue
Edison, New Jersey 08837

1 copies to:

Mark Granger
New York/Caribbean Compliance Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
26 Federal Plaza, Room 747
New York, NY 10278

1 copy to:

New York/Caribbean Superfund Branch
Office of Regional Counsel, Rm. 437
United States Environmental Protection Agency
26 Federal Plaza
New York, New York 10278

Attention: Cortese Landfill Site Attorney

2 copies to:

Michael O'Toole, P.E.
 Director, Hazardous Waste Remediation
 New York State Department of Environmental Conservation
 50 Wolf Road, Room 212
 Albany, New York 12233-7010

Attention: Cortese Landfill Site

48. Within thirty (30) days after completion of all removal actions required under this Order, Respondent shall submit for EPA's review any certificates of destruction and/or copies of manifests that the disposal facility has received the waste.

D. Oversight

49. During the implementation of the requirements of this Order, Respondent and its contractor(s) and subcontractor(s) shall be available for such conferences with EPA and inspections by EPA at and around the Site and at laboratories where analytical work is being done hereunder as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent.

50. Respondent and its employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Order.

E. Plans and Reports Requiring EPA Approval

51. EPA may approve, disapprove, require revisions to, or modify any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order. Except as otherwise expressly provided, if EPA disapproves or otherwise requires any such modifications, Respondent shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless EPA specifies a period of longer duration in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each comment and resubmit the plan, report, or other item with the required changes within the required time. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

52. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent may be deemed

to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the related costs from Respondent. Respondent shall implement any such item(s) as amended or developed by EPA.

53. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work related to the removal activities unilaterally. This provision is not to be construed so as to limit any enforcement or other authorities EPA has under the NCP or under any other applicable regulation or any law.

54. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order shall, upon approval by EPA, be deemed to be incorporated into and an enforceable part of this Order.

F. Community Relations

55. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the public. To the extent requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

G. Access to Property and Information

56. Respondent shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order. EPA, NYSDEC, and their designated representatives, including employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondent shall at all times permit EPA, NYSDEC, and their designated representatives full and unimpeded access to and freedom of movement at the Site, and at any other premises where Work under this Order is to be performed, including any time that Work under this Order is being performed, for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

57. If action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent

shall use its best efforts to obtain access agreements from the present owners within thirty (30) days prior to the need for access for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondent but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities.

58. If such access agreements are not obtained by Respondent within the time period specified in the preceding paragraph, Respondent shall immediately notify EPA of its failure to obtain access and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to any such affected property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

59. Respondent shall provide EPA with access to all records and documentation related to conditions at the Site and the actions conducted pursuant to this Order. All data, information, and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with the implementation of the Work under this Order, including contractual documents, invoices, receipts, work orders and disposal records, shall be made available to EPA upon request. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf, during implementation of this Order.

60. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statute or regulations.

H. Record Retention, Documentation, Availability of Information

61. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by

this Order. At the end of the ten year period, Respondent shall notify EPA thirty (30) days before any document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this section at any time before expiration of the ten year period at the written request of EPA.

62. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 CFR Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondent conforms with applicable New York law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific, or engineering data relating to the Work performed hereunder.

63. Respondent shall maintain an updated log of any documents for which it wishes to assert a claim of privilege. The updated log shall contain, on a document-by-document basis, the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege.

I. Off-Site Shipments

64. All hazardous substances, pollutants, or contaminants removed from the Site pursuant to this Order for off-site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) 40 C.F.R. Part 300.440 of the NCP (published in the Federal Register on September 22, 1993) (c) the EPA "Superfund Removal Procedures" (OSWER 1988), (d) RCRA, and (e) all other applicable federal and state requirements, each of the above as interpreted by EPA.

65. If hazardous substances from the Site are to be shipped outside of New York State, Respondent shall provide prior notification of any such out-of-state waste shipment in accordance with OSWER Directive 9330.2-07. At least seven (7) days prior to any out-of-state waste shipment, Respondent shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the wastes are to be shipped; (b) the type and quantity of waste to

be shipped; (c) the expected schedule for the waste shipments; and (d) the method of transportation.

J. Compliance With Other Laws

66. All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA § 121(e), 42 U.S.C. § 9621(e), and Section 300.415(i) of the NCP. In accordance with Section 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable and as determined by EPA considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991). Respondent shall identify ARARs in the Work Plan.

67. Notwithstanding any other provision in this Order, and in accordance with Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no federal, state, or local permit shall be required for any portion of the Work required hereunder that is conducted entirely on-site, although Respondent must comply with the substantive requirements that would otherwise be included in such a permit. Respondent shall obtain all permits necessary for off-site Work under federal, state, or local laws and shall submit timely applications and requests for any such permits. This Order is not, nor shall it act as, a permit issued pursuant to any federal or state statute or regulation.

K. Emergency Response and Notification of Releases

68. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center [(800) 424-8802] Respondent shall immediately orally notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region II, at (908) 321-6656, or the EPA Region II Emergency 24-hour Hot Line at (908) 548-8730) of the incident or Site conditions. Respondent shall submit a written report to EPA within seven (7) days after such a release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

69. In the event of any action or occurrence during Respondent's performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify the OSC, as provided in the preceding paragraph. Respondent shall take such action in accordance with applicable provisions of this Order, including the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

70. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. FORCE MAJEURE

71. Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by an event which constitutes "force majeure". For purposes of this Order, "force majeure" is defined as any event arising from causes entirely beyond the control of Respondent or of any entity controlled entirely by Respondent, including its contractor(s) and subcontractor(s), that results in a delay or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

72. Respondent shall orally notify the EPA On-Scene Coordinator if circumstances have occurred or are likely to occur which may delay or prevent the performance of any activity required by this Order, regardless of whether those circumstances constitute a force majeure. If the On-Scene Coordinator cannot be reached, Respondent shall leave a message at his or her office. In addition, Respondent shall notify EPA in writing within seven (7) days after the date when Respondent first become aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all

available and pertinent documentation, including any relevant third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its obligations under this Order. Respondent's failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondent's right to claim an event of "force majeure". The burden of proving that an event constituting a "force majeure" has occurred shall rest with Respondent.

73. If EPA determines a delay in performance of a requirement under this Order is or was attributable to a "force majeure" event, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the "force majeure" event.

IX. REIMBURSEMENT

74. Respondent agrees to reimburse EPA for all response costs, as the term is defined in Section 101(25) of CERCLA and relevant case law, incurred by the U.S. Government including oversight costs and direct and indirect costs. EPA will periodically transmit to Respondent accountings of the costs incurred by EPA. Respondent shall remit a cashier's or certified check for the amount of those costs within thirty (30) days following receipt of a written demand from EPA. Reimbursement to EPA shall be made by cashier's or certified check, made payable to the "Hazardous Substance Superfund," with a notation of the index number of this Order (Index Number II-CERCLA-94-0203), and it shall be mailed to the following address:

EPA - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251

Such payments shall also be accompanied by a letter of explanation including the name and address of the Respondent, the name of the Site (the Cortese Landfill Site), and the EPA Region number (EPA Region II); a copy of the letter and the check shall be sent to the EPA addressees listed in paragraph 47, above. Late payments shall accrue interest at the rate of interest on investments of the Hazardous Substance Superfund, in accordance with Section 107(a) of CERCLA.

75. Respondent may dispute claims submitted by EPA pursuant to paragraph 74, above, by submitting to EPA, in writing, within twenty (20) days of receipt of EPA's accounting of its costs, a notice identifying the contested costs and the basis for Respondent's objection. Respondent agrees to limit any disputes concerning EPA's claims for reimbursement pursuant to paragraph 74 to accounting errors and the inclusion of costs outside the scope of said paragraph, above. All undisputed costs shall be remitted by Respondent in accordance with the schedule set forth above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Order. In addition, Respondent shall provide EPA with a copy of the correspondence that establishes and funds the escrow account, including such information as the identity of the bank and bank account under which the escrow account is established, as well as a bank statement showing the initial balance of the escrow account.

76. Disputes pursuant to paragraph 75, above, shall be resolved by the Chief of the Response and Prevention Branch, Emergency and Remedial Response Division, United States Environmental Protection Agency, Region II (hereinafter referred to as the "Chief") or, at the Chief's discretion, by one or more of the Chief's superiors. The Chief shall provide Respondent with a written statement setting forth EPA's position and the basis for that position. The Chief's written statement shall constitute the resolution of the dispute. If the Chief rejects Respondent's argument regarding an accounting error or improperly included costs, Respondent shall, within five (5) days of receipt of the Chief's determination, direct the escrow holder to remit the escrowed monies (with accrued interest) to EPA.

X. STIPULATED AND STATUTORY PENALTIES

77. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, and such failure is not excused under the terms of Section VIII (Force Majeure), Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below for each day of noncompliance:

<u>Days After Required Date</u>	<u>Stipulated Penalty</u>
1 to 15 days	\$ 750.00/day
16 to 25 days	\$ 1,250.00/day
31 to 45 days	\$ 2,000.00/day

Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected, through the 45th day of such noncompliance. The payment of any such penalties and the

accompanying letter shall be due and payable as set forth in paragraph 74, above.

78. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or an act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Order.

79. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XI. RESERVATION OF RIGHTS

80. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and which are not otherwise reimbursed by Respondent. Respondent reserves its right to assert all available defenses to any action brought by EPA or other parties other than in an action to enforce the terms of this Order.

XII. OTHER CLAIMS

81. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in

carrying out any action or activity pursuant to this Order. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

82. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order for any liability that such person may have under CERCLA, other statutes, or the common law, including any claims of the United States for costs, damages, and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

83. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

84. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and Section 300.700(d) of the NCP.

85. Respondent hereby waives any rights or claim it may have to seek reimbursement under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, or any other provision of law, against the United States or the Hazardous Substance Superfund relating to costs incurred by Respondent in the performance of the requirements of this Order at the Site. Respondent reserves any rights it might otherwise have to seek reimbursement of its costs expended under this Order from the Insurance Resolution Fund, if one is established by CERCLA Reauthorization, but no such efforts to seek reimbursement shall relieve Respondent of its obligations to perform the work required under this Order.

86. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. INDEMNIFICATION

87. Respondent agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims, causes of action, damages, and costs of any type or description by third parties for any injuries or damages to persons or property resulting from acts or omissions of Respondent, its officers, directors, officials, agents, servants, receivers, trustees, successors, or assigns as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondent.

88. Claims or causes of action referenced in the preceding paragraph include claims or causes of action (a) arising from, or on account of, acts or omissions of Respondent, Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order, and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of Work on or relating to the Site, including claims on account of construction delays.

89. Respondent agrees to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States, based on any of the acts or omissions referred to in the two preceding paragraphs.

XIV. INSURANCE

90. Prior to commencing any Work at the Site, Respondent shall secure and maintain for the duration of the Work under this Order adequate insurance coverage in light of the potential risks associated with the Site, including comprehensive general liability and automobile insurance, naming as insured the United States. In addition, for the duration of the Work under this Order, Respondent shall satisfy all applicable laws and regulations regarding the provision of workmen's compensation insurance. Such insurance shall name as insured all contractors and subcontractors acting on behalf or under the control of Respondent in connection with any Work at the Site. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, Respondent need only provide that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XV. MODIFICATIONS

91. Minor modifications to any plan or schedule may be made in writing by the OSC or at the OSC's direction. If the OSC makes an oral modification, it will be memorialized in writing within seven (7) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

92. If Respondent seeks permission to deviate from any approved Site Work Plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed Site Work Plan modification and its basis.

93. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve it of its obligation to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified.

XVI. TERMINATION AND SATISFACTION

94. Upon completion of all activities required pursuant to this Order, Respondent shall submit to EPA a Final Report detailing that the activities satisfy the requirements of the Order. When EPA determines after EPA's review of the Final Report that all removal activities have been fully performed in accordance with this Order, EPA will provide notice to Respondent. Such notification shall not affect any continuing obligations of Respondent; if EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

95. At the time of completion of all activities required by this Order, demobilization shall include sampling and proper disposal or decontamination of protective clothing, remaining laboratory samples, and any equipment used to implement the Work hereunder.

XVII. SEVERABILITY

96. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

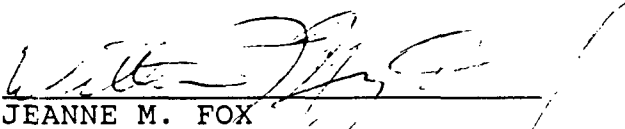
XVIII. EFFECTIVE DATE AND EFFECT OF CONSENT

97. This Order shall become effective on the date of its receipt by counsel for Respondent. All times for performance of actions or activities required herein will be calculated from said effective date.

700054

98. By signing and taking actions under this Order, Respondent does not necessarily agree with the Findings of Fact and Conclusions of Law contained herein. Respondent does not admit any legal liability or waive any defenses or causes of action with respect to issues addressed in this Order, except as otherwise provided in this Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY



JEANNE M. FOX
Regional Administrator
U.S. Environmental Protection Agency
Region II

7/25/94
Date of Issuance

700055

CONSENT

Respondent, the Town of Tusten, has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

Fred Tegeler
(signature)

Fred Tegeler
(printed name of signatory)

Supervisor
(title of signatory)

7/21/94
DATE

700056